

FIRST REGULAR SESSION

HOUSE BILL NO. 360

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES BOUCHER AND KENNEDY (Co-sponsors).

Read 1st time January 15, 2001, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

0871L.03I

AN ACT

To repeal section 408.100, RSMo 2000, relating to interest and fees, and to enact in lieu thereof nineteen new sections relating to the same subject, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 408.100, RSMo 2000, is repealed and nineteen new sections enacted
2 in lieu thereof, to be known as sections 408.100, 408.800, 408.805, 408.810, 408.815, 408.820,
3 408.825, 408.830, 408.835, 408.840, 408.845, 408.850, 408.855, 408.860, 408.865, 408.870,
4 408.875, 408.880 and 408.890, to read as follows:

408.100. This section shall apply to all loans which are not made as permitted by other
2 laws of this state except that it shall not apply to loans which are secured by a lien on real estate,
3 nonprocessed farm products, livestock, farm machinery or crops or to loans to corporations. On
4 any loan subject to this section, any person, firm, or corporation may charge, contract for and
5 receive interest on the unpaid principal balance at rates agreed to by the parties; **provided that,**
6 **it shall be unlawful to charge interest at a rate in excess of thirty percent a.p.r..**

408.800. As used in sections 408.800 to 408.890, the following words mean:

2 **(1) "Check", any check, draft, money order, traveler's check or other instrument**
3 **for the transmission or payment of money;**

4 **(2) "Check-cashing business", a person or entity that for compensation engages,**
5 **in whole or in part, in the business of cashing checks, drafts, money orders, traveler's**
6 **checks or other instruments for the transmission or payment of money. "Check-cashing**
7 **business" does not include the following:**

8 **(a) A state or federally chartered bank, savings association, credit union, or**
9 **industrial loan company;**

10 **(b) Any person who cashes checks without receiving, directly or indirectly, any**

11 consideration or fee therefor; or

12 (c) A retail seller engaged primarily in the business of selling consumer goods,
13 including consumables, to retail buyers that cashes checks for a maximum flat fee of two
14 dollars;

15 (3) "Director", the director of the division of finance of the department of economic
16 development;

17 (4) "Identification", an unexpired and otherwise valid driver's license or state
18 identification card issued by any state of the United States or its territories or the District
19 of Columbia which contains a photograph and signature; a United States Government
20 Resident Alien Identification Card; a United States Passport; a United States Military
21 Identification Card; or a recent utility bill listing an individual's name and address.

408.805. No person shall engage in the business of check-cashing without first
2 registering as provided in sections 408.800 to 408.890.

408.810. 1. An application for registration to operate a check-cashing business shall
2 be in writing, signed under oath and in such other form as the director may prescribe. The
3 application shall include the following information:

4 (1) The name and address of the applicant if the applicant is an individual. If the
5 applicant is a business entity, the name and address of each partner, director, officer,
6 manager, supervisory employee, and authorized agent;

7 (2) The address of each location at which the applicant proposes to do business; and

8 (3) Any other information that the director may require.

9 2. An application for registration shall be filed with a nonrefundable fee, to be set
10 by the director, for the principal place of business of the check-cashing business and for
11 each additional location.

408.815. The director may grant an application for registration at the director's
2 discretion. In determining whether to issue a certificate of registration, the director may
3 require additional information from the applicant in order to determine whether:

4 (1) The individuals who are partners, directors, officers, supervisory employees or
5 authorized agents of the check-cashing business are competent, experienced, possess
6 integrity, are financially able, and possess any other qualifications determined by the
7 director to be necessary. Such individuals shall not have been convicted of violating
8 federal or state currency laws, in particular money laundering or any other felony
9 involving dishonesty, fraud, or deceit, provided the crime is substantially related to the
10 qualifications, functions, or duties of a person engaged in the business of check cashing.
11 Such individuals shall not have committed any act, omission, or practice that consists of
12 a breach of a fiduciary duty, or been subject to any suspension or removal from their

13 position of authority by any agency or department of the United States or any state;

14 (2) Accepting such registration would not be against the public interest; and

15 (3) The applicant has a feasible plan for conducting business.

408.820. 1. An application for initial registration or renewal shall be granted or
2 rejected within sixty days of the filing of the application.

3 2. The director shall deny an application for registration to conduct a check-
4 cashing business, or for renewal of a registration, if any individual who is the partner,
5 director, officer, supervisory employee, or authorized agent of the applicant has been
6 convicted of violating federal or state currency laws, in particular money laundering, or
7 convicted of any other felony involving dishonesty, fraud, or deceit, provided the crime is
8 substantially related to the qualifications, functions, or duties of a person engaged in the
9 business of check cashing; any act, omission, or practice that consists of a breach of
10 fiduciary duty, or been subject to any suspension or removal from their position of
11 authority by any agency or department of the United States or any state.

12 3. If the director denies an initial application for registration, or a renewal
13 application, it shall notify the applicant of the denial. Within twenty days of the date of
14 such notice, the director shall enter upon its records a written decision and findings
15 containing the reasons supporting the denial. Within thirty days of the publication of the
16 decision, the applicant may appeal such denial to the circuit court located in a county or
17 city in which the check-cashing business is to be located.

408.825. 1. Registration pursuant to sections 408.800 to 408.890 shall remain
2 effective for twelve months from the date it is granted, unless sooner surrendered,
3 suspended, or revoked. Registration shall be renewed annually.

4 2. An application for registration renewal must be filed with a nonrefundable fee,
5 to be set by the director, for the principal place of business of the check-cashing business
6 and for each additional location.

408.830. A check-cashing registration is not transferable or assignable.

408.835. No check-cashing business shall:

2 (1) Charge fees in excess of one percent of the face amount of the check, or five
3 dollars, whichever is less, if such check is a payroll or government check payable to the
4 bearer of such check; or

5 (2) Charge fees in excess of two percent of the face amount of the check, or five
6 dollars, whichever is less, for all others.

408.840. A registrant shall:

2 (1) Post in conspicuous locations, in readable type size and style, and in the
3 unobstructed view of the public at each place of business:

- 4 (a) A schedule of fees, along with illustrative examples;
5 (b) A list of valid identifications;
6 (c) A valid copy of its registration certificate; and
7 (d) Information, including a phone number, on how to file a complaint about a
8 check-cashing business pursuant to rules adopted by the director.
- 9 (2) Provide each customer cashing a check with a receipt showing the name or
10 trade name of the registrant, the transaction date, the amount of the check, the fee charged,
11 and the cash given;
- 12 (3) Contact the police or director if a customer tries to cash a check that the check-
13 cashing business has reason to believe is stolen;
- 14 (4) File an annual report with the director providing such information as the
15 director may require concerning its business and operations during the preceding calendar
16 year; and
- 17 (5) Maintain all books, accounts, records, and documents necessary to determine
18 the registrant's compliance with the provisions of sections 408.800 to 408.890. Books,
19 accounts, records, and documents shall be retained for a period of at least three years from
20 the date of each transaction. The registrant shall make the books, accounts, records, and
21 documents available to the director upon request to determine compliance with sections
22 408.800 to 408.890.

408.845. No registrant shall:

- 2 (1) Charge fees in excess of those authorized by sections 408.800 to 408.890;
3 (2) Charge any fees associated with check-cashing services in addition to the posted,
4 regulated check-cashing fees;
5 (3) Use or cause to be published or disseminated any advertising communication
6 that contains any false, misleading, or deceptive statement or representation;
7 (4) Conduct business at premises or locations other than locations registered with
8 the director;
9 (5) Engage in any unfair, deceptive, or fraudulent acts or practices.

**408.850. After notice and an opportunity for hearing, the director may suspend or
2 revoke the registration of a check-cashing business if the director finds that:**

- 3 (1) A fact or condition exists that, if it had existed or been known by the director
4 at the time that the registrant applied for the registration, would have been grounds for
5 denying the application;
6 (2) The registrant knew or should have known that it violated a material provision
7 of the act or a rule or order validly adopted by the director;
8 (3) The registrant is conducting business in an unsafe or unsound manner;

9 (4) The registrant is insolvent;

10 (5) The registrant has suspended payment of its obligations, made an assignment
11 for the benefit of its creditors, or admitted in writing its inability to pay its debts as they
12 became due;

13 (6) The registrant has applied for an adjudication of bankruptcy, reorganization,
14 or other relief under any bankruptcy; or

15 (7) The registrant fails to promptly and adequately respond to communications
16 from the director.

408.855. 1. The director may conduct an investigation to determine the financial
2 responsibility, business experience, character, and general fitness of an applicant, and to
3 conduct an examination to determine the compliance of a check-cashing business with
4 sections 408.800 to 408.890. In making any investigation or examination, the director may
5 administer oaths, subpoena witnesses, and require production of books, documents, or
6 other tangible items, in order to obtain information pertaining to the identities and
7 locations of persons having knowledge of facts concerning compliance with sections
8 408.800 to 408.890.

9 **2.** An applicant shall pay a fee to help cover the costs of an investigation. A
10 registrant shall pay a fee to help cover the costs of an examination.

408.860. 1. If the director determines, after giving notice and an opportunity for
2 a hearing, that a registrant has engaged in or is about to engage in an act or practice
3 constituting a violation of a provision of sections 408.800 to 408.890 or a rule or other order
4 adopted pursuant to sections 408.800 to 408.890, the director may order such registrant to
5 cease and desist from such unlawful act or practice and take such affirmative action as in
6 the director's judgment will effect the purposes of sections 408.800 to 408.890.

7 **2.** If the director makes written findings that consumers will be irreparably harmed
8 by a delay in issuing a cease and desist order, he or she may issue a temporary cease and
9 desist order contemporaneous with giving notice and an opportunity for a hearing.

408.865. 1. A violation of any of the provisions of sections 408.800 to 408.890 shall
2 be deemed an unfair and deceptive trade practice pursuant to section 407.020, RSMo.

3 **2.** The director, an aggrieved party, or a group of aggrieved parties may enforce
4 the provisions of sections 408.800 to 408.890, or restrain any violations of sections 408.800
5 to 408.890, by filing a civil action in a court of competent jurisdiction. A successful
6 plaintiff shall recover actual, consequential, and punitive damages, in addition to
7 reasonable attorney's fees, expert witness fees, and court costs incurred by bringing such
8 action. The minimum amount of damages recovered shall be five hundred dollars or the
9 amount of loss, whichever is greater. A plaintiff may also sue for injunctive or equitable

10 relief.

2 **408.870.** The director may impose a civil penalty not exceeding one thousand
3 dollars for a violation of any provision of sections 408.800 to 408.890. For the purposes of
4 sections 408.800 to 408.890, each separate violation shall be subject to such civil penalty.
5 Civil penalties paid pursuant to sections 408.800 to 408.890 shall be deposited to the credit
6 of a fund that finances government-sponsored consumer education programs regarding
check cashing and other financial services.

2 **408.875.** Any person who knowingly violates sections 408.800 to 408.890 is guilty
of a class A misdemeanor.

2 **408.880. 1.** The director shall submit an annual report to the president pro tem of
3 the senate and the speaker of the house of representatives which includes information
4 helpful to the authority, legislature and public, including:

4 (1) The number of check-cashing businesses granted or denied initial and renewed
5 registration;

6 (2) The number of complaints about check-cashing businesses filed by consumers;

7 (3) The number and outcome of actions brought against check cashers;

8 (4) The amount of money the director has collected from check-cashing businesses
9 in fees and penalties; and

10 (5) Any other information that the director may request from registered check-
11 cashing businesses.

12 **2.** This report shall be made available to the public.

2 **408.890. 1.** The director shall adopt such rules as may be necessary to carry out the
provisions of sections 408.800 to 408.890.

3 **2.** No rule or portion of a rule promulgated pursuant to the authority of sections
4 408.800 to 408.890 shall become effective unless it has been promulgated pursuant to the
5 provisions of chapter 536, RSMo.